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OFFICE OF PETITIONS

In re Application of :
Takei et al. : DECISION ON PETITION
Application No. 10/766,961 :
Filed: January 30, 2004 :
Atty Docket No. 402958/SOGA :

This is a decision on the "PETITION TO CORRECT PATENT APPLICATION PAPERS" filed September 22, 2006, pursuant to 37 CFR 1.53(e)(2) to request correction of the application papers present in the image file wrapper for the referenced patent application.

The petition is DISMISSED.

Any request for reconsideration must be filed within TWO (2) MONTHS of the date of this decision in order to be considered timely. See 37 CFR 1.181(f). This time period may not be extended pursuant to 37 CFR 1.136(a) or (b).

Application papers in the above-identified application were deposited on January 30, 2004. However, on June 14, 2004, the Initial Patent Examination Division mailed applicants a NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION notifying applicants, among other things, that the application papers had been accorded a filing date of January 30, 2004; however, figures 13, 14 and 15 described in the specification appeared to have been omitted. As to this omission, the Notice set a two-month non-extendable period for response.

Applicants did not file a response within the two months. Applicants, thereby, constructively accepted the application as

deposited in the USPTO. More than 2 years later, applicants now file a petition stating that through error and oversight, and unintentionally, the comment (in the Notice) concerning the figures was not given attention and no response was made to the statement in the Notice that Figures 13-15 of the present application appeared to be missing.

Petitioner maintains that the application as filed on January 30, 2004 included 38 pages of specification, two pages of claims and eight sheets of drawings. In addition, petitioner states a preliminary amendment, an Information Disclosure Statement and a priority document were filed. In support thereof, petitioner states that they are submitting copies of postcard receipts, one hand-carried and one returned by mail¹.

Moreover, petitioner contends that the preliminary amendment included two sheets of drawings with the legend "Replacement Sheet." Whereas the original 8 sheets of drawings included a heading identifying the patent application by title, the first-named inventor, and other identifying information. Petitioner maintains that the Office disassembled the preliminary amendment to prepare the image file wrapper and in doing so, the replacement drawing sheets became or were intermixed with the original drawing sheets, with the inadvertent discarding of the original seventh and eighth sheets of drawings. To support the likelihood of such an event having occurred (and generally to errors having been made in the handling of this patent application), petitioner points to a similar event in another application and to strange entries in the transaction history of this case in Private PAIR.

Petitioner's arguments have been considered, but not found persuasive that figures 13, 14 and 15 as alleged were filed as a part of the original application papers. Papers not present in the application file are not considered present in the application absent convincing evidence to the contrary (e.g., a postcard receipt under MPEP § 503 containing specific itemization of the document(s) or fee(s) purported to have been filed with the correspondence at issue) that the Office received and misplaced any document(s) or fee(s) that is not among the official records of the Office.)

¹ However, only one postcard receipt is present on filing of the petition.

The image file wrapper of the application has been reviewed and the figures described as original figures 13, 14 and 15 (without replacement legends) are not among the papers received on January 30, 2004. Petitioner's evidence is not convincing. A postcard receipt, which itemizes and properly identifies the items, which are being filed, serves as *prima facie* evidence of receipt in the Office of all items listed thereon on the date stamped thereon by the Office. See MPEP 503. A review of petitioner's postcard receipt reveals that the papers filed therewith were date stamped as received in the USPTO on January 30, 2004 and assigned application No. 10/766961. Further, the papers included "No. Sheets of Drawings: 8" and a "Preliminary Amendment." However, this evidence does not establish petitioner's contention. There is no dispute that 8 sheets of drawings and a preliminary amendment are present in the application. Rather, the dispute pertains to the sheets containing figures 13, 14 and 15 and the contents of the preliminary amendment. Consistent with the postcard, the Office considers as deposited 8 sheets of drawings and a preliminary amendment. As the number of pages of the preliminary amendment is not set forth on the receipt, it does not serve as *prima facie* evidence that the sheets of drawings were present in both forms and that sheets 7 and 8 were inadvertently discarded by the Office.

Nor are petitioner's arguments with respect to errors in this application or in other applications persuasive. Just because there may have been some error in a subsequent unrelated clerical entry in the transaction history in PAIR does not mean that there was an error in the initial scanning (or assembly) of the application. Petitioner has not shown a relationship between the noted data entry function and the initial scanning (or assembly) of the case. It is not as if petitioner is arguing that the Office erred in scanning in, for example, the pages of specification and thus, the Office also likely erred in scanning in the pages of drawings.

With respect to the error related to another application, it is related to scanning (or assembly) of the application but the circumstances are distinguishable. Notably, unlike in this case, a review of the image file wrapper shows that copies of both the original drawings and the drawings accompanying the preliminary amendment were present in the application on the date of filing. Thus, the record supports a conclusion that all drawings were present and that the Office erred in associating

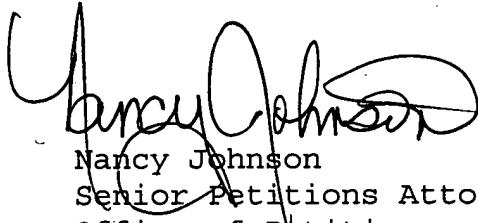
some figures as original drawings that were in fact replacement sheets. Here, both the record and the evidence support a conclusion that only the replacement sheets for figures 13, 14 and 15 were received in the Office.

Having considered the arguments and evidence, it is concluded that petitioner has not shown that the figures submitted on petition were part of the original application disclosure. Accordingly, the petition must be dismissed.

Receipt of the \$400 petition fee is acknowledged.

The application as deposited will be examined in due course.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3219.



Nancy Johnson
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